Mensenrechten in noodtoestand

26 maart 2020

Ali Yildiz
Blog-iacl-aidc.org

Arrested Lawyers Initiative

Terwijl COVID-19 zich verspreidt, verklaren verschillende staten over de hele wereld drastische maatregelen - zelfs noodtoestanden - om de verspreiding ervan te vertragen of te stoppen. Op zulke momenten is naleving van gezondheidsaanbevelingen van de overheid uiterst belangrijk. Maar de VN herinnerden ons op 16 maart 2020: " Staten mogen geen noodmaatregelen misbruiken om de mensenrechten te onderdrukken ."

In die verklaring hebben de VN-deskundigen voor de mensenrechten er bij de staten op aangedrongen te voorkomen dat ze te veel veiligheidsmaatregelen nemen in hun reactie op de uitbraak van het coronavirus, en zij herinneren eraan dat noodbevoegdheden niet mogen worden gebruikt om afwijkende meningen te vernietigen:

> “Het gebruik van noodbevoegdheden moet openbaar worden verklaard en moet worden aangemeld bij de relevante verdragsorganen wanneer de grondrechten, waaronder verkeer, gezinsleven en vergadering, aanzienlijk worden beperkt. Bovendien mogen noodverklaringen op basis van de Covid-19-uitbraak niet worden gebruikt als basis voor bepaalde groepen, minderheden of individuen. Het mag niet dienen als dekmantel voor repressieve actie onder het mom van bescherming van de gezondheid, en mag ook niet worden gebruikt om het werk van mensenrechtenverdedigers het zwijgen op te leggen. Beperkingen die worden genomen om op het virus te reageren, moeten worden gemotiveerd door legitieme volksgezondheidsdoelen en mogen niet alleen worden gebruikt om afwijkende meningen te vernietigen. "

Noodtoestand

In 1961, Judge Maridakis van het Europees Hof voor de Rechten van de Mens (EHRM), onder vermelding van een stelregel van het Romeinse recht, schreef : “Als de staat is bezig met een leven en dood strijd, niemand kan eisen dat zij

afzien van speciale noodmaatregelen : *salus rei publicae suprema lex est* [De veiligheid (of het welzijn van) de staat is de hoogste wet] ... ”. De erkenning van een noodtoestand of een staat van beleg in de binnenlandse rechtsorde dateert dus althans uit de Romeinse tijd. De primaire internationale mensenrechtenverdragen staan staatspartijen toe om in noodgevallen van verschillende rechten af te wijken (art. 15 EVRM; art. 4 IVBPR; art. 27 Amerikaans Verdrag inzake de rechten van de mens).

Het Europees Verdrag tot bescherming van de rechten van de mens (EVRM) en de jurisprudentie van het EHRM

Artikel 15 van het EVRM biedt staten in uitzonderlijke omstandigheden de mogelijkheid om tijdelijk, beperkt en onder toezicht toezicht te houden op hun verplichting om bepaalde rechten en vrijheden uit hoofde van het verdrag te waarborgen . Artikel 15, lid 1, bepaalt dat: “In tijden van oorlog of andere openbare noodsituaties die het leven van de natie bedreigen, mag elke Hoge Verdragsluitende Partij maatregelen nemen die afwijken van haar verplichtingen uit hoofde van dit Verdrag, voor zover strikt vereist door de eisen van de situatie, op voorwaarde dat dergelijke maatregelen zijn niet in strijd met haar andere verplichtingen op grond van het internationaal recht. ”

Volgens het EHRM is 'een andere openbare noodsituatie die het leven van de natie bedreigt' ' een uitzonderlijke crisis- of noodsituatie die de hele bevolking treft en een bedreiging vormt voor het georganiseerde leven van de gemeenschap waaruit de staat is samengesteld ' (*wetteloos tegen Ierland*). De test van een "openbare noodsituatie die het leven van de natie bedreigt" werd door de voormalige Europese Commissie voor de mensenrechten als volgt uiteengezet :

i) De crisis of het gevaar moet reëel of dreigend zijn;

ii) de gevolgen moeten de hele natie betreffen;

iii) De voortzetting van het georganiseerde leven van de gemeenschap moet worden bedreigd; en

iv) De crisis of het gevaar moet uitzonderlijk zijn, in die zin dat de normale maatregelen of beperkingen duidelijk ontoereikend zijn.

In zijn jurisprudentie legt het EHRM de beginselen vast dat "het aan elke verdragsluitende partij, met haar verantwoordelijkheid voor" het leven van [haar] natie ", is om te bepalen of dat leven wordt bedreigd door een" openbare noodsituatie "en, indien dus, hoe ver moet men gaan om de noodsituatie te overwinnen? Niettemin beschikken de verdragsluitende partijen niet over onbeperkte discretie. Het is aan het Hof om te beslissen of de staten *onder meer* de "strikte mate die door de eisen strikt vereist" van de crisis zijn overschreden. Bij de uitoefening van dit Europese toezicht moet het Hof passende gewicht toekennen aan relevante factoren als de aard van de rechten die door de afwijking worden aangetast, en de omstandigheden die leiden tot en de duur van de noodsituatie. ” (*Aksoy tegen Turkije , Brannigan-McBride v. Het Verenigd Koninkrijk*)

De voorwaarde "voor zover strikt vereist door de vereisten" zoals neergelegd in artikel 15, lid 1, EVRM, vereist dat de maatregel geschikt is voor het nagestreefde doel en niet verder gaat dan nodig is om het doel te bereiken beoogd (het evenredigheidsbeginsel).

Het EVRM beschermt bepaalde rechten en vrijheden tegen afwijkingen. Overeenkomstig artikel 15, lid 2, geen afwijking van het recht op leven (art. 2), of het verbod op foltering (art. 3), slavernij en dienstbaarheid (art. 4, par. 1), of het beginsel van geen straf zonder wet (Art. 7) geschiedt overeenkomstig artikel 15, lid 1. Drie van de aanvullende protocollen van het EVRM bevatten ook clausules die afwijking van bepaalde rechten die erin vervat zijn, verbieden . Dit zijn protocol nrs. 6-13 (afschaffing van de doodstraf in vredestijd, beperking van de doodstraf in oorlogstijd - volledige afschaffing van de doodstraf) en het *ne bis in idem-* principe (protocol nr. 7).

De andere beperking van het recht van een regering om van het verdrag af te wijken, is dat de krachtens artikel 15 genomen maatregelen in overeenstemming zijn met de bezorgdheid over de andere verplichtingen van de staat die voortvloeien uit andere internationale verdragen waarbij de staat partij is.

In afwijking van het EVRM moet de staat de secretaris-generaal van de Raad van Europa onmiddellijk op de hoogte stellen van de rechten en vrijheden en het grondgebied waarop de afwijking van toepassing is (artikel 15, lid 3) . Bovendien houdt de betrokken staat de secretaris-generaal volledig op de hoogte van de maatregelen die hij heeft genomen en de redenen daarvoor, en stelt hij hem ook

in kennis wanneer deze maatregelen niet meer werken. Het belangrijkste doel van het informeren van de secretaris-generaal is dat de afwijking openbaar wordt. Een ander doel is dat het EVRM een systeem van collectieve handhaving is en het is via de secretaris-generaal dat de andere verdragsluitende staten van de afwijking in kennis worden gesteld.

De Europese Commissie voor de rechten van de mens heeft eerder geconcludeerd dat, bij gebrek aan een officiële openbare kennisgeving van een afwijking die zonder onvermijdelijke vertraging en met voldoende informatie (met inbegrip van de betrokken maatregelen en hun teksten) is gemaakt om de andere Hoge Verdragsluitende Partijen in staat te stellen de aard en omvang van de afwijking (*Griekenland / Verenigd Koninkrijk*), was artikel 15 niet van toepassing op de maatregelen van de betrokken staat. (*Cyprus tegen Turkije, rapport van de Commissie (1983), § 66-68*).

Het Internationaal Verdrag inzake burgerrechten en politieke rechten (ICCPR)

Artikel 4, lid 1, IVBPR bepaalt dat:

> "In tijden van openbare noodsituaties die het leven van de natie bedreigen en waarvan het bestaan officieel wordt afgekondigd, kunnen de Staten die partij zijn bij dit Verdrag, maatregelen nemen die afwijken van hun verplichtingen onder dit Verdrag, voor zover strikt vereist door de eisen van de situatie, op voorwaarde dat dergelijke maatregelen niet in strijd zijn met hun andere verplichtingen uit hoofde van het internationale recht en geen discriminatie inhouden louter op grond van ras, huidskleur, geslacht, taal, religie of sociale afkomst. "

Volgens het VN-Mensenrechtencomité (algemene opmerking 29) moet er, om een beroep te doen op artikel 4, aan twee fundamentele voorwaarden zijn voldaan: de situatie moet neerkomen op een openbare noodsituatie die het leven van de natie bedreigt, en de staat die partij is moet officieel zijn riep de noodtoestand uit. De Siracusa-beginselen inzake de beperking en afwijking van bepalingen in de ICCPRdefinieert een openbare noodsituatie als een bedreiging voor het leven van de natie die: (a) de hele bevolking treft, en of het hele of een deel van het grondgebied van de staat, en (b) de fysieke integriteit van de bevolking bedreigt, de politieke onafhankelijkheid of de territoriale integriteit van de staat of het bestaan of de fundamentele werking van instellingen die

onmisbaar zijn om de in het convenant erkende rechten te waarborgen en te beschermen.

Net als het EVRM vereist het ICCPR dat de afwijkingen "voor zover strikt vereist door de eisen van de situatie". Volgens de Siracusa-beginselen moet een openbare noodtoestand te goeder trouw worden bekendgemaakt en worden gebaseerd op een objectieve beoordeling van de situatie om te bepalen in hoeverre deze een bedreiging vormt voor het leven van de natie. De ernst, duur en geografische reikwijdte van elke afwijkingsmaatregel zijn van dien aard dat ze slechts strikt noodzakelijk zijn om de bedreiging voor het leven van de natie het hoofd te bieden en evenredig zijn aan de aard en omvang ervan.

De Siracusa-beginselen vereisen ook dat een beperking van de rechten of vrijheden die zijn vastgelegd in het Verdrag:

(a) zijn gebaseerd op een van de gronden die beperkingen rechtvaardigen die worden erkend door het relevante artikel van het Verdrag;

(b) te reageren op een dringende publieke of sociale behoefte;

(c) een legitiem doel nastreven;

d) in verhouding staan tot dat doel; en

(e) worden beëindigd in de kortst mogelijke tijd die nodig is om een einde te maken aan de openbare noodsituatie die het leven van de natie bedreigt.

Evenzo somt de speciale rapporteur van de VN voor mensenrechten en uitzonderingsstaten de beginselen op die worden gegenereerd door artikel 4 IVBPR als: 'tijdelijkheid', 'officiële proclamatie', 'legaliteit', 'onaantastbaarheid / ontastbaarheid absolute rechten' .

Volgens de Siracusa-beginselen kan de volksgezondheid worden aangevoerd als een grond om bepaalde rechten te beperken, zodat een staat maatregelen kan nemen die een ernstige bedreiging vormen voor de gezondheid van de bevolking of individuele leden van de bevolking. Deze maatregelen moeten specifiek gericht zijn op het voorkomen van ziekte of letsel of het verlenen van zorg aan zieken en gewonden. Er zal terdege rekening worden gehouden met de gezondheidsvoorschriften van de Wereldgezondheidsorganisatie.

Overeenkomstig artikel 4, lid 1, IVBPR doet de staat, die besluit het afwijkingsrecht toe te passen, een officiële afkondiging overeenkomstig zijn nationale recht. Het is essentieel voor het behoud van de legaliteitsbeginselen en de rechtsstaat op de momenten dat ze het meest nodig zijn .

Artikel 4§2 ICCPR somt niet-afbreekbare (absolute) rechten op. Dit zijn het recht op leven (art. 6), het verbod op marteling, wrede, onmenselijke of onterende behandeling of bestraffing, en de vrijheid van medische of wetenschappelijke experimenten zonder vrije toestemming (art. 7), het verbod op slavernij en dienstbaarheid (art. .8§1-2), het principe van geen straf zonder wet, en het strafverbod op grond van wetgeving met terugwerkende kracht (artikel 15), het verbod op gevangenisstraf wegens het niet nakomen van contractuele verplichtingen (artikel 11), het recht op erkenning als persoon voor de wet (art. 16) en de vrijheid van denken, geweten en religie (art. 18). Dezelfde regel is van toepassing op staten die partij zijn bij het tweede facultatieve protocol bij het verdrag, met het oog op de afschaffing van de doodstraf (artikel 6).

Het VN-Mensenrechtencomité heeft een aantal andere rechten en vrijheden opgesomd waarvoor geen wettelijke afwijking geldt, hoewel ze niet worden genoemd in artikel 4, lid 2, IVBPR, in haar algemene opmerkingen nrs. 29 , 32 en 35 .

De staat, die de noodtoestand officieel heeft afgekondigd, stelt de andere staten die partij zijn bij dit verdrag door middel van de secretaris-generaal van de Verenigde Naties onmiddellijk in kennis, overeenkomstig artikel 4, lid 3, IVBPR . De kennisgeving bevat voldoende informatie, zoals (a) de bepalingen van het convenant waarvan ervan is afgeweken; (b) een kopie van de afkondiging van de noodsituatie, samen met de grondwettelijke bepalingen en andere relevante nationale wetten, besluiten en voorschriften; c) de ingangsdatum van de oplegging . Het vereiste van onmiddellijke kennisgeving geldt evenzeer voor de beëindiging van de afwijking .

Gezien de verwoestende resultaten die we hebben gezien in China, Italië en Spanje - inclusief het dodental, besmettingspercentage en overweldigde gezondheidsstelsels - kan worden gezegd dat het gevaar dat voortvloeit uit COVID-19 reëel en uitzonderlijk is, de effecten hebben betrekking op het geheel natie, en het bedreigt de continuïteit van het georganiseerde leven van de gemeenschap. Daarom kan het uitroepen van de noodtoestand vanwege COVID-

19 als wettig worden beschouwd onder het EVRM en het ICCPR. Dit rechtvaardigt echter niet automatisch de maatregelen die de staten hebben genomen onder de afgekondigde noodregeling. Toch kunnen we zeggen dat opsluitingsmaatregelen, zoals isolement, verbod op bijeenkomsten, sluiting van scholen en werkplekken en reisverboden, kunnen worden aanvaard zoals vereist door de vereisten van de situatie, evenredig en rechtmatig. Echter, de duur en uitvoering van deze maatregelen zijn ook essentieel om te beslissen over hun wettigheid. Regeringen moeten beperkingen vermijden die niet strikt vereist en wetenschappelijk gerechtvaardigd zijn.

Hoewel het te vroeg is om doorslaggevend te zeggen, is er in China, Turkije en Iran een patroon waarneembaar dat er onvoldoende transparantie is bij de overheid en dat individuen, waaronder gezondheidswerkers, afwijken van het officiële narratieve risico dat wordt vervolgd. Het is duidelijk dat de door de pandemie veroorzaakte noodsituatie geen beperking van de vrijheid van meningsuiting en de vrijheid van media rechtvaardigt.

Verder moet worden opgemerkt dat volgens de website van de Raad van Europa op 19 maart 2020 alleen Letland en Roemenië de secretaris-generaal van hun noodmaatregelen in kennis hadden gesteld. Het lijkt erop dat Italië, België, Spanje en anderen hun maatregelen niet bij COE hebben aangemeld, hoewel wettelijk verplicht is om onmiddellijk te melden. Het niet nakomen van de aanmeldingsverplichtingen kan op zichzelf een schending van het internationaal recht vormen en ook het vermogen van internationale instanties om na te gaan of overheidsmaatregelen zelf in overeenstemming zijn met het internationaal recht, belemmeren.

Professor Yuval Noah Harari heeft gewaarschuwd: ' Als we niet oppassen, kan deze epidemie de versnelde ontwikkeling van het totalitaire regime rechtvaardigen. 'We moeten dus zowel de maatregelen van onze regeringen naleven, maar ook waakzaam zijn of deze maatregelen in overeenstemming zijn met het internationale en nationale recht en of staten profiteren van deze pandemie om een autoritair of totalitair regime te bereiken.

Ali Yildiz is een Turkse advocaat en directeur van het Arrested Lawyers Initiative.

Voorgesteld citaat: Ali Yildiz, "Mensenrechten in noodtoestand" IACL-AIDC-blog (26 maart 2020) https://blog-iacl-aidc.org/2020-posts/2020/3/26/human-rights- in een noodtoestand.

SIRACUSA PRINCIPLES

on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights

American Association
for the
International Commission of Jurists

MEMBERS OF THE INTERNATIONAL COMMISSION OF JURISTS

President
KEBA MBAYE, SENEGAL

Vice-Presidents
ROBERTO CONCEPCION, PHILIPPINES
HELENO CLAUDIO FRAGOSO, BRAZIL
JOHN P. HUMPHREY, CANADA

Members of Executive Committee
WILLIAM J. BUTLER, U.S.A. (Chairman)
ANDRES AGUILAR MAWDSLEY, VENEZUELA
P. TELFORD GEORGES, THE BAHAMAS
LOUIS JOXE, FRANCE
P.J.G. KAPTEYN, NETHERLANDS
RUDOLF MACHACEK, AUSTRIA
J. THIAM HIEN YAP, INDONESIA

Commission Members
BADRIA AL-AWADHI, KUWAIT
ALPHONSE BONI, IVORY COAST
RAUL F. CARDENAS, MEXICO
HAIM H. COHN, ISRAEL
AUGUSTO CONTE-MACDONELL, ARGENTINA
TASLIM OLAWALE ELIAS, NIGERIA
ALFREDO ETCHEBERRY, CHILE
GUILLERMO FIGALLO, PERU
LORD GARDINER, UNITED KINGDOM
MICHAEL D. KIRBY, AUSTRALIA
KINUKO KUBOTA, JAPAN
RAJSOOMER LALLAH, MAURITIUS
TAI-YOUNG LEE, REP. OF KOREA
SEAN MACBRIDE, IRELAND
J.R.W.S. MAWALLA, TANZANIA
FRANCOIS-XAVIER MBOUYOM, CAMEROON
FALI S. NARIMAN, INDIA
NGO BA THANH, VIETNAM
TORKEL OPSAHL, NORWAY
GUSTAF B.E. PETREN, SWEDEN
SIR GUY POWLES, NEW ZEALAND
SHRIDATH S. RAMPHAL, GUYANA
DON JOAQUIN RUIZ-GIMENEZ, SPAIN
TUN MOHAMED SUFFIAN, MALAYSIA
SIR MOTI TIKARAM, FIJI
CHITTI TINGSABADH, THAILAND
CHRISTIAN TOMUSCHAT, FED. REP. OF GERMANY
MICHAEL A. TRIANTAFYLLIDES, CYPRUS
AMOS WAKO, KENYA

Honorary Members
SIR ADETOKUNBO A. ADEMOLA, NIGERIA
ARTURO A. ALAFRIZ, PHILIPPINES
DUDLEY B. BONSAL, U.S.A.
ELI WHITNEY DEBEVOISE, U.S.A.
PER FEDERSPIEL, DENMARK
T.S. FERNANDO, SRI LANKA
W.J. GANSHOF VAN DER MEERSCH, BELGIUM
HANS HEINRICH JESCHECK, FED. REP. OF GERMANY
JEAN FLAVIEN LALIVE, SWITZERLAND
NORMAN S. MARSH, UNITED KINGDOM
JOSE T. NABUCO, BRAZIL
LUIS NEGRON FERNANDEZ, PUERTO RICO
LORD SHAWCROSS, UNITED KINGDOM
EDWARD ST. JOHN, AUSTRALIA

Secretary-General: NIALL MACDERMOT

109 Route de Chene
1224 Chene-Bougeries
Geneva, Switzerland

AMERICAN ASSOCIATION FOR THE INTERNATIONAL COMMISSION OF JURISTS, INC.

777 UNITED NATIONS PLAZA
NEW YORK, NEW YORK 10017

Members of the Board of Directors

ELI WHITNEY DEBEVOISE
Chairman Emeritus

Chairman of the Board
GEORGE N. LINDSAY

President
WILLIAM J. BUTLER

Secretary
HARVEY J. GOLDSCHMID

Treasurer
P. NICHOLAS KOURIDES

ROBERT P. BASS, JR.
DONALD T. FOX
PETER S. HELLER
RICHARD H. MOORE
ANDRE W. G. NEWBURG
MATTHEW NIMETZ
STEPHEN A. OXMAN
WILLIAM J. SCHRENK, JR.
JEROME J. SHESTACK
PETER O. A. SOLBERT
EDWARD HALLAM TUCK

Directors Emeriti:
DUDLEY B. BONSAL
WHITNEY NORTH SEYMOUR (1901-1983)
BENJAMIN R. SHUTE
BETHUEL M. WEBSTER

The American Association for the International Commission of Jurists, Inc. is a non-profit public corporation organized on a membership basis. All contributions are tax deductible. In addition to the Association's *Newsletter*, members are entitled to receive *The Review* and the *ICJ Newsletter*, published, respectively, semi-annually and quarterly, by the International Commission of Jurists.

Table of Contents

Introductory Note 3

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights 5

International Covenant on Civil and Political Rights 18

Optional Protocol to the International Covenant on Civil and Political Rights 39

Individual Limitation Provisions Cross-Referenced to the Covenant 44

April 1985

Introductory Note

It has long been observed by the American Association for the International Commission of Jurists (AAICJ) that one of the main instruments employed by governments to repress and deny the fundamental rights and freedoms of peoples has been the illegal and unwarranted Declaration of Martial Law or a State of Emergency. Very often these measures are taken under the pretext of the existence of a "public emergency which threatens the life of the nation" or "threats to its national security."

The abuse of applicable provisions allowing governments to limit and derogate from certain rights contained in the International Covenant on Civil and Political Rights has resulted in the need for a closer examination of the conditions and grounds for permissable limitations and derogations in order to achieve an effective implementation of the rule of law. The United Nations General Assembly has frequently emphasized the importance of a uniform interpretation of limitations on rights enunciated in the Covenant.

With this in mind, the AAICJ initiated a colloquium composed of 31 distinguished experts in international law, held at Siracusa, Italy, in the Spring of 1984. This meeting, the first of its kind, was co-sponsored by the International Commission of Jurists, the Urban Morgan Institute for Human Rights, and the International Institute of Higher Studies in Criminal Sciences.

The participants examined the limitation and derogation provisions in the Covenant, seeking to identify:

(a) their legitimate objectives;

(b) the general principles of interpretation which govern their imposition and application; and

(c) some of the main features of the grounds for limitation or derogation.

It was recognized that other criteria determine the scope of rights in the Covenant, e.g., the concept of arbitrariness, but time was not available to examine them. It was hoped that it might be possible to examine these other limits on some future occasion.

The participants were agreed that:

(a) there is a close relationship between respect for human rights and the maintenance of international peace and security — indeed the systematic violation of human rights undermines the national security and public order and may constitute a threat to international peace; and

(b) notwithstanding the different stages of economic development reached in different states, the implementation of human rights is an essential requirement for development in the broadest sense.

These principles are considered by the participants to reflect the present state of international law, with the exception of certain recommendations indicated by the use of the verb "should" instead of "shall."

Included as part of this publication are the agreed-upon Siracusa Principles and a cross-referenced text of the Covenant.

The AAICJ was founded on December 27, 1967, to uphold and strengthen the principles of human rights and the rule of law throughout the world. To this end, it cooperates with the International Commission of Jurists, a Geneva-based international non-governmental organization. The Association works closely with the American Bar Association and state and local bar associations. It also maintains close contact with legal scholars, U.S. Congressional and Senate members, the Department of State and other organizations and individuals in related fields in order to prepare and provide the most recent information on human rights.

The American Association encourages all nations to take effective measures to protect the basic rights of their citizens. Both the Association and the International Commission offer their counsel to any nation to facilitate its transition to a fuller realization of those rights.

William J. Butler, *President*

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights

I. **Limitation Clauses**

- A. General Interpretative Principles Relating to the Justification of Limitations
- B. Interpretative Principles Relating to Specific Limitation Clauses
    - i. "prescribed by law"
    - ii. "in a democratic society"
    - iii. "public order *(ordre public)*"
    - iv. "public health"
    - v. "public morals"
    - vi. "national security"
    - vii. "public safety"
    - viii. "rights and freedoms of others," or "rights and reputations of others"
    - ix. "restrictions on public trial"

II. **Derogations in a Public Emergency**

- A. "Public Emergency Which Threatens the Life of the Nation"
- B. Proclamation, Notification, and Termination of a Public Emergency
- C. "Strictly Required by the Exigencies of the Situation"
- D. Non-Derogable Rights
- E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures
- F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies

I. LIMITATION CLAUSES

A. General Intepretative Principles Relating to the Justification of Limitations *

1. No limitations or grounds for applying them to rights guaranteed by the Convenant are permitted other than those contained in the terms of the Covenant itself.

2. The scope of a limitation referred to in the Covenant shall not be interpreted so as to jeopardize the essence of the right concerned.

3. All limitation clauses shall be interpreted strictly and in favor of the rights at issue.

4. All limitations shall be interpreted in the light and context of the particular right concerned.

5. All limitations on a right recognized by the Covenant shall be provided for by law and be compatible with the objects and purposes of the Covenant.

6. No limitation referred to in the Covenant shall be applied for any purpose other than that for which it has been prescribed.

7. No limitation shall be applied in an arbitrary manner.

8. Every limitation imposed shall be subject to the possibility of challenge to and remedy against its abusive application.

9. No limitation on a right recognized by the Covenant shall discriminate contrary to Article 2, paragraph 1.

10. Whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation:

(a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant;

(b) responds to a pressing public or social need;

(c) pursues a legitimate aim; and

(d) is proportionate to that aim.

Any assessment as to the necessity of a limitation shall be made on objective considerations.

11. In applying a limitation, a state shall use no more restrictive means than are required for the achievement of the purpose of the limitation.

* The term "limitations" in these principles includes the term "restrictions" as used in the Covenant.

12. The burden of justifying a limitation upon a right guaranteed under the Covenant lies with the state.

13. The requirement expressed in Article 12 of the Covenant that any restrictions be consistent with other rights recognized in the Covenant is implicit in limitations to the other rights recognized in the Covenant.

14. The limitation clauses of the Covenant shall not be interpreted to restrict the exercise of any human rights protected to a greater extent by other international obligations binding upon the state.

B. Interpretative Principles Relating to Specific Limitation Clauses

i. "prescribed by law"

15. No limitation on the exercise of human rights shall be made unless provided for by national law of general application which is consistent with the Covenant and is in force at the time the limitation is applied.

16. Laws imposing limitations on the exercise of human rights shall not be arbitrary or unreasonable.

17. Legal rules limiting the exercise of human rights shall be clear and accessible to everyone.

18. Adequate safeguards and effective remedies shall be provided by law against illegal or abusive imposition or application of limitations on human rights.

ii. "in a democratic society"

19. The expression "in a democratic society" shall be interpreted as imposing a further restriction on the limitation clauses it qualifies.

20. The burden is upon a state imposing limitations so qualified to demonstrate that the limitations do not impair the democratic functioning of the society.

21. While there is no single model of a democratic society, a society which recognizes and respects the human rights set forth in the United Nations Charter and the Universal Declaration of Human Rights may be viewed as meeting this definition.

iii. "public order (ordre public)"

22. The expression "public order *(ordre public)*" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order *(ordre public)*.

23. Public order *(ordre public)* shall be interpreted in the context of the purpose of the particular human right which is limited on this ground.

24. State organs or agents responsible for the maintenance of public order *(ordre public)* shall be subject to controls in the exercise of their power through the parliament, courts, or other competent independent bodies.

iv. "public health"

25. Public health may be invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured.

26. Due regard shall be had to the international health regulations of the World Health Organization.

v. "public morals"

27. Since public morality varies over time and from one culture to another, a state which invokes public morality as a ground for restricting human rights, while enjoying a certain margin of discretion, shall demonstrate that the limitation in question is essential to the maintenance of respect for fundamental values of the community.

28. The margin of discretion left to states does not apply to the rule of non-discrimination as defined in the Covenant.

vi. "national security"

29. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

vii. "public safety"

33. Public safety means protection against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.

34. The need to protect public safety can justify limitations provided by law. It cannot be used for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

viii. "rights and freedoms of others" or the "rights or reputations of others"

35. The scope of the rights and freedoms of others that may act as a limitation upon rights in the Covenant extends beyond the rights and freedoms recognized in the Covenant.

36. When a conflict exists between a right protected in the Covenant and one which is not, recognition and consideration should be given to the fact that the Covenant seeks to protect the most fundamental rights and freedoms. In this context especial weight should be afforded to rights not subject to limitations in the Covenant.

37. A limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism.

ix. "restrictions on public trial"

38. All trials shall be public unless the Court determines in accordance with law that:

(a) the press or the public should be excluded from all or part of a trial on the basis of specific findings announced in open court showing that the interest of the private lives of the parties or their families or of juveniles so requires; or

(b) the exclusion is strictly necessary to avoid publicity prejudicial to the fairness of the trial or endangering public morals, public order (*ordre public*), or national security in a democratic society.

II. DEROGATIONS IN A PUBLIC EMERGENCY

A. "Public Emergency which Threatens the Life of the Nation"

39. A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 (hereinafter called "derogation measures") only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. A threat to the life of the nation is one that:

(a) affects the whole of the population and either the whole or part of the territory of the state; and

(b) threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant.

40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogations under Article 4.

41. Economic difficulties *per se* cannot justify derogation measures.

B. Proclamation, Notification, and Termination of a Public Emergency

42. A state party derogating from its obligations under the Covenant shall make an official proclamation of the existence of a public emergency threatening the life of the nation.

43. Procedures under national law for the proclamation of a state of emergency shall be prescribed in advance of the emergency.

44. A state party derogating from its obligations under the Covenant shall immediately notify the other states parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and the reasons by which it was actuated.

45. The notification shall contain sufficient information to permit the states parties to exercise their rights and discharge their obligations under the Covenant. In particular it shall contain:

(a) the provisions of the Covenant from which it has derogated;

(b) a copy of the proclamation of emergency, together with the constitutional provisions, legislation, or decrees governing the state of emergency in order to

assist the states parties to appreciate the scope of the derogation;

(c) the effective date of the imposition of the state of emergency and the period for which it has been proclaimed;

(d) an explanation of the reasons which actuated the government's decision to derogate, including a brief description of the factual circumstances leading up to the proclamation of the state of emergency; and

(e) a brief description of the anticipated effect of the derogation measures on the rights recognized by the Covenant, including copies of decrees derogating from these rights issued prior to the notification.

46. States parties may require that further information necessary to enable them to carry out their role under the Covenant be provided through the intermediary of the Secretary-General.

47. A state party which fails to make an immediate notification in due form of its derogation is in breach of its obligations to other states parties and may be deprived of the defenses otherwise available to it in procedures under the Covenant.

48. A state party availing itself of the right of derogation pursuant to Article 4 shall terminate such derogation in the shortest time required to bring to an end the public emergency which threatens the life of the nation.

49. The state party shall on the date on which it terminates such derogation inform the other state parties, through the intermediary of the Secretary-General of the United Nations, of the fact of the termination.

50. On the termination of a derogation pursuant to Article 4 all rights and freedoms protected by the Covenant shall be restored in full. A review of the continuing consequences of derogation measures shall be made as soon as possible. Steps shall be taken to correct injustices and to compensate those who have suffered injustice during or in consequence of the derogation measures.

C. "Strictly Required by the Exigencies of the Situation"

51. The severity, duration, and geographic scope of any derogation measure shall be such only as are strictly necessary to deal with the threat to the life of the nation and are proportionate to its nature and extent.

52. The competent national authorities shall be under a duty to assess individually the necessity of any derogation measure taken or proposed to deal with the specific dangers posed by the emergency.

53. A measure is not strictly required by the exigencies of the situation where ordinary measures permissible under the specific limitations clauses of the Covenant would be adequate to deal with the threat to the life of the nation.

54. The principle of strict necessity shall be applied in an objective manner. Each measure shall be directed to an actual, clear, present, or imminent danger and may not be imposed merely because of an apprehension of potential danger.

55. The national constitution and laws governing states of emergency shall provide for prompt and periodic independent review by the legislature of the necessity for derogation measures.

56. Effective remedies shall be available to persons claiming that derogation measures affecting them are not strictly required by the exigencies of the situation.

57. In determining whether derogation measures are strictly required by the exigencies of the situation the judgment of the national authorities cannot be accepted as conclusive.

D. Non-Derogable Rights

58. No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not be be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.

59. State parties to the Covenant, as part of their obligation to ensure the enjoyment of these rights to all persons within their jurisdiction (Art. 2(1)) and to adopt measures to secure an effective remedy for violations (Art. 2(3)), shall take special precautions in time of public emergency to ensure that neither official nor semi-official groups engage in a practice of arbitrary and extra-judicial killings or involuntary disappearances, that persons in detention are protected against torture and other forms of cruel, inhuman or degrading treatment or punishment, and that no persons are convicted or punished under laws or decrees with retroactive effect.

60. The ordinary courts shall maintain their jurisdiction, even in a time of public emergency, to adjudicate any complaint that a non-derogable right has been violated.

E. Some General Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures

61. Derogation from rights recognized under international law in order to respond to a threat to the life of the nation is not exercised in a legal vacuum. It is authorized by law and as such it is subject to several legal principles of general application.

62. A proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation in order to determine to what extent, if any, it poses a threat to the life of the nation. A proclamation of a public emergency, and consequent derogations from Covenant obligations, that are not made in good faith are violations of international law.

63. The provisions of the Covenant allowing for certain derogations in a public emergency are to be interpreted restrictively.

64. In a public emergency the rule of law shall still prevail. Derogation is an authorized and limited prerogative in order to respond adequately to a threat to the life of the nation. The derogating state shall have the burden of justifying its actions under law.

65. The Covenant subordinates all procedures to the basic objectives of human rights. Article 5(1) of the Covenant sets definite limits to actions taken under the Covenant:

> Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

Article 29(2) of the Universal Declaration of Human Rights sets out the ultimate purpose of law:

> In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

These provisions apply with full force to claims that a situation constitutes a threat to the life of a nation and hence enables authorities to derogate.

66. A bona fide proclamation of the public emergency permits derogation from specified obligations in the Covenant, but does not authorize a general departure from international obligations. The Covenant in Articles 4(1) and 5(2) expressly prohibits derogations which are inconsistent with other obligations under international law. In this regard, particular note should be taken of international obligations which apply in a public emergency under the Geneva and ILO Conventions.

67. In a situation of a non-international armed conflict a state party to the 1949 Geneva Conventions for the protection of war victims may under no circumstances suspend the right to a trial by a court offering the essential guarantees of independence and impartiality (Article 3 common to the 1949 Conventions). Under the 1977 additional Protocol II, the following rights with respect to penal prosecution shall be respected under all circumstances by state parties to the Protocol:

(a) the duty to give notice of charges without delay and to grant the necessary rights and means of defense;

(b) conviction only on the basis of individual penal responsibility;

(c) the right not to be convicted, or sentenced to a heavier penalty, by virtue of retroactive criminal legislation;

(d) presumption of innocence;

(e) trial in the presence of the accused;

(f) no obligation on the accused to testify against himself or to confess guilt;

(g) the duty to advise the convicted person on judicial and other remedies.

68. The ILO basic human rights conventions contain a number of rights dealing with such matters as forced labor, freedom of association, equality in employment and trade union and workers' rights which are not subject to derogation during an emergency; others permit derogation, but only to the extent strictly necessary to meet the exigencies of the situation.

69. No state, including those that are not parties to the Covenant, may suspend or violate, even in times of public emergency:

(a) the right to life;

(b) freedom from torture or cruel, inhuman or degrading treatment or punishment and from medical or scientific experimentation;

(c) the right not to be held in slavery or involuntary servitude; and,

(d)the right not to be subjected to retroactive criminal penalties as defined in the Conenant.

Customary international law prohibits in all circumstances the denial of such fundamental rights.

70. Although protections against arbitrary arrest and detention (Art. 9) and the right to a fair and public hearing in the determination of a criminal charge (Art. 14) may be subject to legitimate limitations if strictly required by the exigencies of an emergency situation, the denial of certain rights fundamental to human dignity can never be strictly necessary in any conceivable emergency. Respect for these fundamental rights is essential in order to ensure enjoyment of non-derogable rights and to provide an effective remedy against their violation. In particular:

(a) all arrests and detention and the place of detention shall be recorded, if possible centrally, and made available to the public without delay;

(b) no person shall be detained for an indefinite period of time, whether detained pending judicial investigation or trial or detained without charge;

(c) no person shall be held in isolation without communication with his family, friend, or lawyer for longer than a few days, e.g., three to seven days;

(d) where persons are detained without charge the need for their continued detention shall be considered periodically by an independent review tribunal;

(e) any person charged with an offense shall be entitled to a fair trial by a competent, independent and impartial court established by law;

(f) civilians shall normally be tried by the ordinary courts; where it is found strictly necessary to establish military tribunals or special courts to try civilians, their competence, independence and impartiality shall be ensured and the need for them reviewed periodically by the competent authority;

(g) any person charged with a criminal offense shall be entitled to the presumption of innocence and to at least the following rights to ensure a fair trial:

— the right to be informed of the charges promptly, in detail and in a language he understands,

— the right to have adequate time and facilities to prepare the defense including the right to communicate confidentially with his lawyer,

— the right to a lawyer of his choice, with free legal assistance if he does not have the means to pay for it,

— the right to be present at the trial,

— the right not to be compelled to testify against himself or to make a confession,

— the right to obtain the attendance and examination of defense witnesses,

— the right to be tried in public save where the court orders otherwise on grounds of security with adequate safeguards to prevent abuse,

— the right to appeal to a higher court;

(h) an adequate record of the proceedings shall be kept in all cases; and,

(i) no person shall be tried or punished again for an offense for which he has already been convicted or acquitted.

F. Recommendations Concerning the Functions and Duties of the Human Rights Committee and United Nations Bodies

71. In the exercise of its power to study, report, and make general comments on states parties' reports under Article 40 of the Covenant, the Human Rights Committee may and should examine the compliance of states parties with the provisions of Article 4. Likewise it may and should do so when exercising its powers in relevant cases under Article 41 and the Optional Protocol relating, respectively, to interstate and individual communications.

72. In order to determine whether the requirements of Article 4(1) and (2) have been met and for the purpose of supplementing information in states parties' reports, members of the Human Rights Committee, as persons of recognized competence in the field of human rights, may and should have regard to information they consider to be reliable provided by other inter-governmental bodies, non-governmental organizations, and individual communications.

73. The Human Rights Committee should develop a procedure for requesting additional reports under Article 40(1)(b) from states parties which have given notification of derogation under Article 4(3) or which are reasonably believed by the Committee to have imposed emergency measures subject to Article 4 constraints. Such additional reports should relate to questions concerning the emergency insofar as it affects the implementation of the Covenant and should be dealt with by the Committee at the earliest possible date.

74. In order to enable the Human Rights Committee to perform its fact-finding functions more effectively, the committee should develop its procedures for the consideration of communications under the Optional Protocol to permit the hearing of oral submissions and evidence as well as visits to states parties alleged to be in violation of the Covenant. If necessary, the states parties to the Optional Protocol should consider amending it to this effect.

75. The United Nations Commission on Human Rights should request its Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare an annual list of states, whether parties to the Covenant or not, that proclaim, maintain, or terminate a public emergency together with:

(a) in the case of a state party, the proclamation and notification; and,

(b) in the case of other states, any available and apparently reliable information concerning the proclamation, threat to the life of the nation, derogation measures and their proportionality, non-discrimination, and respect for non-derogable rights.

76. The United Nations Commission on Human Rights and its Sub-Commission should continue to utilize the technique of appointment of special rapporteurs and investigatory and fact-finding bodies in relation to prolonged public emergencies.

International Covenant on Civil and Political Rights*

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligations of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal

---

* 16 December 1966 (G.A. Res. 2200 (XXI), *United Nations Doc. A/6316*); entry into force: 23 March 1976; 79 ratifications: Afghanistan, Australia, Austria, Barbados, Belgium, Bolivia, Bulgaria, Byelorussian SSR, Cameroon, Canada, Central African Rep., Chile, Colombia, Congo, Costa Rica, Cyprus, Czechoslovakia, Denmark, Dominican Rep., Ecuador, Egypt, El Salvador, Finland, France, Gabon, Gambia, German Dem. Rep., Germany/Fed. Rep., Guinea, Guyana, Hungary, Iceland, India, Iran, Iraq, Italy, Jamaica, Japan, Jordon, Kenya, Korea/Dem. Peop. Rep., Lebanon, Libyan Arab Jama., Luxembourg, Madagascar, Mali, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Norway, Panama, Peru, Poland, Portugal, Romania, Rwanda, Saint Vincent & Grenadines, Senegal, Spain, Sri Lanka, Suriname, Sweden, Syrian Arab Rep., Tanzania, Trinidad & Tobago, Tunisia, Ukrainian SSR, USSR, United Kindgom, Uruguay, Venezuela, Vietnam, Yugoslavia, Zaire, Zambia.

system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be

imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where consci entious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order *(ordre public)*, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Convenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Convenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order *(ordre public)* or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was comitted, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedon of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Convenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order *(ordre public)*, or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereinafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the State Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the

United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for reelection if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be

replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's reponsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be reelected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance to the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parities. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three

months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the State Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Optional Protocol to the International Covenant on Civil and Political Rights *

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant,

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the committee for consideration.

---

* 16 December 1966 (G.A. Res. 2200 (XXI), *United Nations Doc. A/6316*); entry into force: 23 March, 1976; 31 ratifications: Barbados, Bolivia, Canada, Central African Rep., Colombia, Congo, Costa Rica, Denmark, Dominican Rep., Ecuador, Finland, Iceland, Italy, Jamaica, Luxembourg, Madagascar, Mauritius, Netherlands, Nicaragua, Norway, Panama, Peru, Portugal, Saint Vincent & Grenadines, Senegal, Suriname, Sweden, Trinidad & Tobago, Uruguay, Venezuela, Zaire.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies.

This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514 (XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in Article 48, paragraph 1, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;

(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

Individual Limitation Provisions Cross-Referenced to the Covenant

1. the limitation on actions "aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant" (Art. 5(1)).
2. "consistent with the other rights recognized in the present Covenant" (Art. 12).
3. "provided by law" (Arts, 12, 19), "prescribed by law" (Arts. 18, 22), "in conformity with the law" (Art. 21), "pursuant to law" (Art. 5), "established by law" (Art. 9).
4. "necessary . . . in a democratic society" (Arts. 21, 22), "in a democratic society" (Art. 14).
5. "public order *(ordre public)*" (Arts. 12, 14, 18, 19, 22).
6. "protection of public health or morals" (Arts. 12, 18, 19, 21, 22), including "for reasons of morals" (Art. 14).
7. "national security" (Arts. 12, 19, 21, 22), including "compelling reasons of . . . " (Art. 13) and "reasons of . . . in a democratic society" (Art. 14).
8. "public safety" (Arts. 18, 21, 22).
9. "protection of the rights and freedoms of others" (Arts. 12, 21, 22) including "the fundamental rights and freedoms of others" (Art. 18), and "respect of the rights or reputations of others" (Art. 19).
10. "when the interest of the private lives of the parties so requires" (Art. 14).

AMERICAN ASSOCIATION FOR THE INTERNATIONAL COMMISSION OF JURISTS, INC.
777 UNITED NATIONS PLAZA
NEW YORK, NEW YORK 10017

Members of the Board of Directors

ELI WHITNEY DEBEVOISE
Chairman Emeritus

Chairman of the Board
GEORGE N. LINDSAY

President
WILLIAM J. BUTLER

Secretary
HARVEY J. GOLDSCHMID

Treasurer
P. NICHOLAS KOURIDES

ROBERT P. BASS, JR.
DONALD T. FOX
PETER S. HELLER
RICHARD H. MOORE
ANDRE W. G. NEWBURG
MATTHEW NIMETZ
STEPHEN A. OXMAN
WILLIAM J. SCHRENK, JR.
JEROME J. SHESTACK
PETER O. A. SOLBERT
EDWARD HALLAM TUCK

Directors Emeriti:
DUDLEY B. BONSAL
WHITNEY NORTH SEYMOUR (1901-1983)
BENJAMIN R. SHUTE
BETHUEL M. WEBSTER

The American Association for the International Commission of Jurists, Inc. is a non-profit public corporation organized on a membership basis. All contributions are tax deductible. In addition to the Association's *Newsletter*, members are entitled to receive *The Review* and the *ICJ Newsletter*, published, respectively, semi-annually and quarterly, by the International Commission of Jurists.

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.

— United Nations Universal Declaration
of Human Rights, 1948

price
$2.00 U.S. / 5 SW. FR. / £1 U.K.